

In deciding what amounts to a confession and what does not, very little assistance can be derived from the English authorities because statements of any kind made to the police in England by accused persons are admissible provided they have not been obtained by improper means. The Indian authorities are of no assistance because sub-section (2) of our section 17 does not form part of the Indian Evidence Act, so that in India the word "confession" has been held to bear its ordinary everyday meaning of an admission of guilt.

Sub-section (2) of our section 17 reads as follows :—

"A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence."

It is quite clear from the words "or suggesting the inference" that something short of a full admission of guilt by the accused may yet be a "confession" within the definition. Whether, therefore, any particular statement amounts to a confession or not must depend upon the particular wording of the statement, the circumstances in which it is made and the charge to which the statement directly or indirectly refers.

It seems to us that the words of the statement here in question, although innocent enough in themselves, when taken in conjunction with all the surrounding circumstances might be said to suggest the inference that the appellant committed the offence. The question whether the words of that statement might thus amount to a confession under section 17(2) of the Evidence Enactment was not considered by the learned trial Judge. The Deputy Public Prosecutor who argued the appeal failed to satisfy us that the words of this statement did not in the circumstances amount to a confession and therefore not being satisfied on this point we hold they should not have been admitted in evidence.

It remains to consider what effect, if any, the admission of this statement may have had upon the minds of the Assessors and upon the result of the trial. There was clear evidence that the appellant was found in the company of two armed men; that she was so found in an isolated squatter's hut; and that one of them was wearing his arms so conspicuously that no one in his company could have failed to know that he was armed. In addition to this, there was the evidence of the Assistant Superintendent of Police to the effect that the appellant obviously knew the wounded man. This by itself might not be convincing, since he did not understand the language used, but there is also the evidence of the detective, which was clearly believed, that the appellant, who was a Hakka of the squatter type, spoke to the wounded man, who was also a

Hakka of the same type, in Mandarin and we think that evidence of the facts that she spoke to him first and that she spoke in Mandarin was admissible, even if evidence of the words spoken was inadmissible. The latter point is particularly significant, in the peculiar circumstances of this case, because it is admitted that the appellant can speak some Mandarin and she was a total stranger to the detective. The evidence of the Assistant Superintendent of Police together with the evidence of the detective that she spoke in Mandarin indicate so strongly that the appellant was in fact acquainted with the wounded man that evidence of the actual words spoken add little to the prosecution case. In our opinion, therefore, this is a case in which it is proper to invoke the proviso to section 27 of the Courts Ordinance, 1948 which gives us power, notwithstanding that in our opinion the point raised might be decided in favour of the appellant, to dismiss the appeal if we consider that no substantial miscarriage of justice has occurred. We are of opinion that no substantial miscarriage of justice did occur in this case by reason of the admission of the statement above referred to and we accordingly dismiss the appeal.

Appeal dismissed.

SIM KEE TONG v. REX

[A. Cr. J. (Murray-Aynsley C.J. and Gordon Smith J.)
November 18 and 23, 1949]

[Singapore — Magistrate's Appeal No. 135 of 1949]

Practice Direction — Criminal trial — Reasonable opportunity of obtaining services of counsel — Fixing day for hearing.

Any trial where the accused is deprived of a reasonable opportunity of obtaining the services of counsel will of necessity be regarded as mistrial. To secure this the day of hearing should not be fixed at too early a date.

MAGISTRATE'S APPEAL.

The appellant was charged that he on or about September 12, 1949, at Aljunied Road, Singapore, pretended to hold the office of a Detective as a Public Servant, and in such assumed character did ask one Baba bin Hj. Suki to produce his identity card under colour of such office, an offence punishable under section 170 of the Penal Code. He was arrested and charged on the following day, September 13; bail was granted and the case postponed to September 24, and then on October 1, it was transferred to the 1st District Court when it was mentioned and set down for trial on October 10.

The appellant had engaged on October 8 an advocate to appear for him and the case came on for

trial on the 10th without the advocate being aware of the fact of trial on that date. On the same date the case was transferred to the 2nd District Court, but counsel for the appellant could not appear, he being engaged in a preliminary inquiry in another Court, and not knowing that either the case was fixed for trial or that it was to be transferred.

Application for adjournment was refused. The accused appealed.

N. N. Leicester for the appellant.

A. V. Winslow (D. P. P.) for the respondent.

The following directions were made:—

Gordon Smith J. (November 18):—On the principle that Justice should not only be done but that such is manifestly done, I thought that there should be a new trial in this case.

The case had been transferred to another Court and the accused had instructed on the 8th October an Advocate to appear for him and the case came on for trial on the 10th without the Advocate being aware of the fact of trial on that date.

And, it is a very grave charge.

Murray-Aynsley C.J. (November 23):—The previous directions issued when I was absent from the Colony must all be taken as being subject to the proviso that an accused person has a reasonable opportunity of obtaining the services of counsel. Any trial where the accused was deprived of such a reasonable opportunity will of necessity be regarded as mistrial. To secure this the day for hearing should not be fixed at too early a date.

Re-trial ordered.

PARAMASIVAN & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Laville J.) January 27, 1949]

[Johore Bahru — Criminal Appeal No. 20 of 1948]

Penal Code, ss. 323 and 352 — Charge of rioting amended to one of voluntarily causing hurt — Power of Appeal Court to alter finding of guilty of voluntarily causing hurt to finding of guilty of rioting, if the facts so warrant — Summary Trial — Offences in same transaction — Criminal Procedure Code (Cap. 6), ss. 155, 166, 167, 173, 179 and 421.

In this case the appellants were originally charged with rioting. At the end of the prosecution case the Court amended the charge against the accused to one of voluntarily causing hurt upon which latter charge the accused were ultimately convicted. On appeal it appeared that there was not sufficient evidence of voluntarily causing hurt against each of the accused, but there was evidence of rioting.

Held: (1) it was open to the Appeal Court to reverse a finding which amounts to an acquittal and substitute therefor a finding of conviction if the facts so warrant and the acquittal was based on wrong grounds; (2) in this case the finding of guilty of voluntarily causing hurt should be altered to a finding of guilty of rioting under s. 147 of the Penal Code.

Case referred to:—

(1) *Queen-Empress v. Jabanulla & Anor.* I.L.R. 23 Cal. 975.

MAGISTRATE'S CRIMINAL APPEAL.

Mark Morrison for the appellant.

W. M. McCall (Federal Counsel) for the respondent.

Laville J. : — Accused in this case were charged with rioting on 1st February 1948 at Bukit Chagar, Johore Bahru. At the end of the prosecution case the Court amended the charge against the accused to one of voluntarily causing hurt to Sinniah and Muthu, and the case proceeded on the basis of that charge.

Counsel for accused made no objection either to the amendment of the charge or to the fact that the accused were not asked to plead thereto, and after they had given evidence and called witnesses the 5 accused now appealing were convicted on the amended charge and the last 4 appellants were bound over to keep the peace for 3 months in a sum of \$50. The first appellant was treated as a youthful offender and admonished and discharged.

Against this sentence the accused now appeal on the following grounds:—

- (1) that the appellants were never charged with the offence for which they were convicted;
- (2) that the charge should have been in duplicate, i.e. causing hurt to Sinniah, and a second charge of causing hurt to Muthu;
- (3) that the necessary particulars were not given which would enable the defence to meet the charge; and
- (4) that causing hurt to Sinniah and Muthu formed no part of the original charge and did not fall within the ambit of s. 166 or s. 167, Cr.P.C.

It is clear from the record that after amending the charge, under the provisions of section 173 (h) Criminal Procedure Code, the trial Magistrate omitted the procedure laid down by section 173 (i) of the Code. It was quite clear, however, from the evidence taken already in the hearing of the accused that they each must have known that they were now charged with striking and causing hurt to Sinniah and Muthu severally, and that they were not prejudiced in their defence by failure to ask them to plead to the charge. The action of the Magistrate, though irregular, did not amount to an illegality and in view of section 421 Criminal Procedure Code the decision arrived at should not be upset on that ground.